IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 53 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

KASHIRAM TEXTILE MILLS P. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 53 of 1987

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for the Respodnent 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether, in law and on facts, the Tribunal was right in holding that since the IAC was not justified in issuing the directions u/s 144-A of the I.T. Act, 1961 the penalty u/s 271(1)(c) of the I.T. Act, 1961 cannot be sustained?"

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas learned advocate Shri R.K. Patel has appeared for the respondent assessee.

3. looking to the facts of the case, it is necessary to narrate history with regard to the case also.

4. Under the provisions of sec. 144-A of the Act, the IAC had exercised his power and thereafter penalty proceedings under sec. 271(1)(c) of the Act had been initiated. In the present reference, this Court has to examine whether the penalty proceedings under the provisions of sec. 271(1)(c) can be sustained.

5. Before dealing with the above-referred reference, it is pertinent to note that I.T.R. No. 66/84 was filed in this Court at the instance of the revenue. In the said reference, the following question was referred to this Court as question No. 1.

"Whether, on the facts and circumstances of the case the Tribunal was right in law in holding that the IAC cannot issue directions u/s 144-A during the pendency of a reference before him u/s 144-B(4)?"

6. So far as ITR No. 66/84 is concerned, this Court decided the said reference on 18th July 1995 and opined that the IAC was empowered to issue directions under sec. 144-A of the Act. Thus, the said question was answered in favour of the revenue and against the assessee. While deciding the reference, this Court also directed the Tribunal to decide the appeal on merit as the appeal had not been decided in view of the fact that there was a doubt whether the IAC could have issued directions under sec. 144-A of the Act.

7. We have been informed by the learned advocates that inspite of the direction given by this Court on 18th July 1995 in ITR No. 66/84, the Tribunal has not decided the appeal pending before it on merits.

8. Now, as already stated hereinabove, it has been held that the IAC was empowered to issue directions under sec. 144-A of the Act, the Tribunal will have to examine validity of the directions given by the IAC or in other words, the appeal will have to be decided on merits; and thereafter, the Tribunal will have to examine whether the penalty proceedings initiated by the I.T.O. under the provisions of sec. 271(1)(c) of the Act are legal and proper, and also decide the appeal in penalty proceedings on merits.

9. As we have been informed that till today the Tribunal has not given effect to the order passed in ITR No. 66/84, in our opinion, it would not be possible to answer the question which has been referred to us in the present reference.

10. In the circumstances, we decline to answer the question and direct the Tribunal to take appropriate decision in pursuance of the directions given by this Court in ITR No. 66/84 as expeditiously as possible.

The reference thus stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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